

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____	:	
LINDA SOAVE,	:	
	:	
Plaintiff,	:	
	:	C.A. No.:
v.	:	
	:	
HOME DEPOT USA, INC.	:	
	:	
Defendant.	:	
_____	:	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446, Defendant Home Depot U.S.A., Inc. (“Home Depot”), by and through its undersigned counsel, hereby files its Notice of Removal of this action (the “Action”) from the Middlesex Superior Court of the Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts. Home Depot appears for the purpose of removal only and for no other purpose, reserves all defenses and rights available to it, and states as follows:

1. On or around September 11, 2020, Plaintiff Linda Soave (“Plaintiff”) commenced the Action in the Middlesex Superior Court for the Commonwealth of Massachusetts as Docket No. 2081-CV--02206. See Exhibit 1.

2. On or about December 23, 2022, Plaintiff *improperly* served a copy of the Summons and Complaint upon an individual identified as “Danny Fernandez” at the Home Depot store location in Waltham, Massachusetts. See Exhibit 1.

3. Due to improper service, Home Depot’s counsel was never made aware of the commenced action, resulting in a default judgement issuing against Home Depot on July 13, 2021. See Exhibit 2.

4. On or about March 30, 2022, The Honorable Christopher Barry Smith vacated the default judgement against Home Depot and ordered Plaintiff to properly serve Home Depot. See Exhibit 2.

5. On April 25, 2022, Plaintiff properly served Home Depot through its registered agent at 84 State Street, Boston MA. See Exhibit 3.

6. No orders have been issued in this Action.

7. In accordance with the requirements of 28 U.S.C. § 1446(b)(1) and Toro v. CSX Intermodal Terminals, Inc., 199 F. Supp. 3d 320, 323 (D. Mass. 2016), this Notice of Removal is filed within thirty (30) days of Home Depot's receipt, through service or otherwise, of the ***Amended*** Complaint establishing that the case could be removed.

8. Plaintiff alleges that she is a resident of the Commonwealth of Massachusetts. See Exhibit 4.

9. Defendant Home Depot is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. See Exhibit 5.

10. In the Amended Complaint, the Plaintiff alleges that on or about September 14, 2017, she "suffered significant injuries when she fell" at the Home Depot store located in Waltham, Massachusetts. See Exhibit 4.

11. In the Amended Complaint, Plaintiff alleges damages exceeding \$175,000.00. See Exhibit 4.

12. The Action is a civil action over which the Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441, in that the parties are citizens of different states and the amount in controversy with respect to Plaintiff exceeds \$75,000, exclusive of interest and costs.

13. Pursuant to 28 U.S.C. § 1446(d), Home Depot promptly will file a copy of this Notice of Removal with the Clerk of the Middlesex Superior Court of the Commonwealth of Massachusetts and will serve a copy of the same on counsel for Plaintiff.

WHEREFORE, Home Depot hereby removes the Action now pending in the Middlesex Superior Court of the Commonwealth of Massachusetts Docket No. 2081-CV--02206, to the United States District Court for the District of Massachusetts.

Respectfully submitted,

DEFENDANT,
HOME DEPOT U.S.A., INC.,
By its Attorneys,

Dated: May 13, 2022

/s/ Kelly Malone

Kelly Martin Malone (#18093)
Anthony P. Gatto (#698301)
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2022, I caused a true copy of the foregoing document to be served upon counsel of record through the court's CM/ECF filing system and electronic mail.

Scott D. Goldberg, Esq. (BBO# 551712)
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/s/ Kelly Malone

Kelly Martin Malone